



result of repetitive motion in her federal employment. The reverse of the claim form indicated that she stopped working on November 16, 2008 and returned to work November 21, 2008. By decision dated September 15, 2009, OWCP accepted the following conditions: bilateral flexor tenosynovitis, right tunnel radial neuropathy, right ulnar neuropathy, carpal tunnel median neuropathy, right upper extremity, overuse syndrome, left upper extremity and cervical strain.<sup>2</sup>

According to a September 29, 2009 e-mail correspondence, appellant had returned to work “on the Flat Sorters and Manual Flats,” which was not her date-of-injury position. In a notice of recurrence (Form CA-2a) dated October 8, 2009, she claimed a recurrence of disability commencing September 23, 2009. On the form appellant indicated that she had returned to work on October 1, 2009, at four days a week. She stated that she had never healed from her original injury and her work continued to aggravate the condition.

With respect to medical evidence, appellant submitted a September 23, 2009 narrative report from Dr. Scott Fried, an osteopath, who stated that she reported “ongoing and progressively worsening symptoms” that he stated were described in an August 19 treatment note. Dr. Fried indicated that she had pain shooting through both arms from the neck. According to him, “We again discussed [appellant’s] coming out of work but for now she would really like to try to stick it out for financial reasons.”

The record contains two “disability” notes from Dr. Fried dated September 23, 2009. One of the notes stated that appellant may continue current job as tolerated, with increase in breaks from 5 to 10 minutes every hour and she would decrease work to four days a week. Another September 23, 2009 note stated that she was under Dr. Fried’s care for documented work injuries and due to an increase in symptoms she was unable to work from September 23 to October 1, 2009.

In a report dated January 13, 2010, Dr. Fried stated that appellant was working three days a week in a modified position, but was still pitching mail and that aggravated her condition. He stated that symptoms were more tolerable and the pain better controlled.

By decision dated January 28, 2010, OWCP denied the claim for a recurrence of disability. It found the medical evidence was insufficient to establish the claim.

Appellant requested a hearing before OWCP’s hearing representative, which was held on May 18, 2010. Additional medical evidence was submitted to the record. In a report dated November 30, 2009, Dr. Fried provided results on examination and indicated that appellant should work three days a week. He stated that the present work activities were exacerbating her work-related diagnoses. Dr. Fried further stated, “These work activities are outside the physical limits of this disease and continuing these activities will no doubt worsen the symptoms as well as underlying pathology. This could possibly lead to the need for surgery.”

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<sup>2</sup> The record indicates that OWCP paid compensation for wage loss from February 14 to March 20, 2009.

In a report dated May 27, 2010, Dr. Fried provided a history and results on examination. He stated that on May 4, 2009 appellant reported ongoing and progressive symptoms. Dr. Fried further stated:

“It should be noted further that in [May 2009] [appellant] sustained a significant aggravation of the above[-]noted diagnoses and upper extremity conditions. This was directly caused by the work activities she was performing and specifically the change in her work where she had to go to more manually work including the more aggressive reaching, lifting, pulling, pushing and casing activities. This repetitive activity resulted in aggravation of these problems and also aggravation of [appellant’s] shoulder problems and involvement of both shoulders resulting ultimately in positive findings on her MRI scans....

“In summary, [appellant] has sustained significant acute injury in [May 2009] worsening her already present accepted work conditions. She has new acute injury with new acute conditions as noted above with aggravation of her underlying upper extremity injuries.”

By decision dated August 4, 2010, OWCP’s hearing representative affirmed the January 28, 2010 decision.

### **LEGAL PRECEDENT**

OWCP’s regulations define the term recurrence of disability as follows:

“Recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition, which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness. This term also means an inability to work that takes place when a light-duty assignment made specifically to accommodate an employee’s physical limitations due to his or her work-related injury or illness is withdrawn or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.”<sup>3</sup>

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that he or she can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence a recurrence of total disability and show that he or she cannot perform such light duty. As part of this burden, the employee must show either a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty requirements.<sup>4</sup> To establish a change in the

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<sup>3</sup> 20 C.F.R. § 10.5(x).

<sup>4</sup> *Albert C. Brown*, 52 ECAB 152 (2000); *Mary A. Howard*, 45 ECAB 646 (1994); *Terry R. Hedman*, 38 ECAB 222 (1986).

nature and extent of the injury-related condition, there must be probative medical evidence of record. The evidence must include a medical opinion, based on a complete and accurate factual and medical history, and supported by sound medical reasoning, that the disabling condition is causally related to employment factors.<sup>5</sup>

### ANALYSIS

The record indicated that appellant did not return to her date-of-injury position after filing her occupational claim, which was accepted for the cervical and upper extremity conditions noted above. Although OWCP referred to a recurrence of disability commencing September 12, 2009, the Form CA-2a claimed disability commencing September 23, 2009. Appellant was off work until October 1, 2009, and then returned to work at four days a week, with a further reduction to three days a week. It is her burden of proof to establish a spontaneous change in the nature and extent of an employment-related condition as of September 23, 2009.

Appellant received treatment on September 23, 2009 from Dr. Fried, who reported at that time ongoing and progressively worsening symptoms, although he referred to an August 19, 2009 note and appeared to indicate that the symptoms were the same as the earlier date. In his more detailed May 27, 2010 report, Dr. Fried noted progressive symptoms on May 4, 2009 and “markedly worse” symptoms on August 19, 2009. His reports do not establish a specific change in the nature and extent of an employment-related condition on September 23, 2009, but rather a continuation of symptoms. Moreover, the opinion on disability commencing September 23, 2009 is unclear, as Dr. Fried appeared to indicate in his narrative report and a disability note that appellant would continue working, and in another note, he stated that she was disabled.

As to causal relationship between appellant’s condition and any disability commencing September 23, 2009, Dr. Fried did not refer to it as a spontaneous change in the employment-related condition. He opines in the May 27, 2010 report that appellant’s modified-job duties had aggravated her condition as of May 2009. This would not be a recurrence of disability, but rather a new injury. Even if an aggravation of a prior injury, if new employment factors are implicated then it is a claim for a new injury.<sup>6</sup>

The issue before the Board on this appeal was a claim for a recurrence of disability commencing September 23, 2009. On that issue appellant did not meet her burden of proof, for the reasons noted above. On appeal, she argues that Dr. Fried provided proof of an overall worsening of her condition. Dr. Fried’s reports do not establish a spontaneous change in the nature and extent of an employment-related condition as of September 23, 2009.

It is not clear whether appellant has filed a claim for a new injury. OWCP’s hearing representative noted that appellant could file a claim for a new injury for a shoulder condition. As noted above, a claim for an aggravation of the arm conditions would also be a claim for a new injury. Appellant indicated in her Form CA-2a that she felt her condition was aggravated by her

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<sup>5</sup> *Maurissa Mack* 50 ECAB 498 (1999).

<sup>6</sup> See *B.B.*, Docket No. 09-1858 (issued April 16, 2010); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3(b)(2) (May 1997).

current work, but OWCP did not request clarification. If OWCP has not already done so, it should appropriately develop a claim for a new injury.

With respect to a recurrence of disability, appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128 (a) and 20 C.F.R. §§ 10.605 through 10.607.

**CONCLUSION**

The Board finds that appellant has not established a recurrence of disability commencing September 23, 2009.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated August 4, 2010 is affirmed.

Issued: August 19, 2011  
Washington, DC

Richard J. Daschbach, Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board